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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Case No.: 4:23-cv-00354-TUC-AMM

**FEDERAL DEFENDANTS' ANSWER
TO THE AMENDED AND
SUPPLEMENTAL COMPLAINT**

²⁶ Pursuant to Fed. R. Civ. P. 25(d), Gary Washington is substituted for Tom Vilsack.

²⁷ Pursuant to Fed. R. Civ. P. 25(d), Gary Washington is substituted for Tom Visack.

³ Pursuant to Fed. R. Civ. P. 25(d), Paul Souza is substituted for Martha Williams.

Southern Arizona Cattlemen's
Protective Association, Inc.,

Intervenor-Defendant.

Defendants Randy Moore, in his official capacity as Chief of the U.S. Forest Service (“USFS”), Gary Washington, in his official capacity as Acting Secretary of the U.S. Department of Agriculture, Walter Cruickshank, in his official capacity as Acting Secretary of the U.S. Department of the Interior, and Paul Souza, in his official capacity as Acting Director of the U.S. Fish and Wildlife Service (“FWS”) (collectively, “Federal Defendants”), provide the following Answer to Plaintiffs’ Amended and Supplemental Complaint for Declaratory and Injunctive Relief (ECF No. 34). Federal Defendants deny any allegations in Plaintiffs’ Complaint, whether express or implied, that are not specifically admitted, denied, or qualified herein.

1. The allegations in the first and second sentences of Paragraph 1 are a characterization of Plaintiffs' action to which no response is required. To the extent a response is required, Federal Defendants deny the allegations in the first and second sentences of Paragraph 1. Federal Defendants deny the allegations in the first part of the third sentence of Paragraph 1 regarding “[t]he BiOp and USFS's reliance on it” and the characterization of the agencies' actions and purported “new evidence.” The remaining allegations in the third sentence of Paragraph 1 purport to characterize the Endangered Species Act (“ESA”), which speaks for itself and is the best evidence of its

1 contents. Federal Defendants deny any allegations inconsistent with the
2 statute's plain language, meaning, or context.

3 2. The allegations in the first sentence of Paragraph 2 regarding livestock
4 grazing "adversely affecting" three species and "their habitat" in "various
5 ways" are too broad and generalized to permit a response, and Federal
6 Defendants deny them on that basis. Federal Defendants deny the remaining
7 allegations in the first sentence of Paragraph 2. Federal Defendants deny the
8 allegations in the second sentence of Paragraph 2. The allegations in the
9 third, fourth, fifth, and sixth sentences of Paragraph 2 purport to characterize
10 FWS' September 30, 2021, Biological Opinion on Ongoing Grazing on the
11 Coronado National Forest ("2021 BiOp"), which speaks for itself and is the
12 best evidence of its contents. Federal Defendants deny any allegations
13 inconsistent with the document's plain language, meaning, or context.

14 17 3. Federal Defendants deny the allegations in the first and second sentences of
15 Paragraph 3. The allegations in the third sentences of Paragraph 3 purport to
16 characterize the 2021 BiOp, which speaks for itself and is the best evidence
17 of its contents. Federal Defendants deny any allegations inconsistent with the
18 document's plain language, meaning, or context.

19 23 4. Federal Defendants deny the allegations in the first and second sentences of
20 Paragraph 4. The allegations in the third sentence of Paragraph 4 are a
21 characterization of Plaintiffs' requested relief to which no response is
22 required. To the extent a response is required, Federal Defendants deny the

1 allegations in the third sentence of Paragraph 4. The allegations in the fourth
2 sentence of Paragraph 4 purport to characterize the ESA, which speaks for
3 itself and is the best evidence of its contents. Federal Defendants deny any
4 allegations inconsistent with the statute's plain language, meaning, or
5 context.

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7 5. The allegations in Paragraph 5 consist of legal conclusions to which no
8 response is required. To the extent a response is required, the allegations are
9 denied.

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11 6. Federal Defendants lack information or knowledge sufficient to formulate an
12 opinion as to the truth of the allegations in Paragraph 6 and deny them on
13 that basis.

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15 7. Federal Defendants lack information or knowledge sufficient to formulate an
16 opinion as to the truth of the allegations in Paragraph 7 and deny them on
17 that basis.

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19 8. Federal Defendants lack information or knowledge sufficient to formulate an
20 opinion as to the truth of the allegations in Paragraph 8 and deny them on
21 that basis.

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23 9. Federal Defendants lack information or knowledge sufficient to formulate an
24 opinion as to the truth of the allegations in Paragraph 9 and deny them on
25 that basis.

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10. Federal Defendants lack information or knowledge sufficient to formulate an opinion as to the truth of the allegations in Paragraph 10 and deny them on that basis.

11. Federal Defendants lack information or knowledge sufficient to formulate an opinion as to the truth of the allegations in Paragraph 11 and deny them on that basis.

12. Federal Defendants deny the allegations in the first sentence of Paragraph 12 regarding “Defendants’ ongoing violations of the ESA and the APA.” Federal Defendants lack information or knowledge sufficient to formulate an opinion as to the truth of the remaining allegations in the first sentence of Paragraph 12 and deny them on that basis. The allegations in the second and third sentences of Paragraph 12 are a characterization of Plaintiffs’ requested relief to which no response is required. To the extent a response is required, Federal Defendants deny the allegations in the second and third sentences of Paragraph 12.

13. Federal Defendants admit the allegations in the first sentence of Paragraph 13. Federal Defendants admit that the Chief of the USFS is responsible for overseeing USFS's actions challenged in this lawsuit and is sued in their official capacity. Federal Defendants deny the remaining allegations in Paragraph 13.

14. Federal Defendants deny that Tom Vilsack is the Secretary of the Department of Agriculture and aver that Gary Washington is the Acting

Secretary of the Department of Agriculture. Federal Defendants admit the remaining allegations in the first sentence of Paragraph 14. Federal Defendants admit that the USFS is an agency within the Department of Agriculture and that the Secretary is sued in their official capacity. Federal Defendants deny the remaining allegations in Paragraph 14.

15. Federal Defendants deny that Martha Williams is the Director of FWS and aver that Paul Souza is the Acting Director of FWS. Federal Defendants admit that FWS is an agency within the Department of the Interior and that Paul Souza is sued in their official capacity. Federal Defendants deny the remaining allegations in Paragraph 15.

16. Federal Defendants deny that Deb Haaland is the Secretary of the Department of the Interior and aver that Walter Cruickshank is the Acting Secretary of the Department of the Interior. Federal Defendants admit that FWS is an agency within the Department of the Interior and that the Secretary is sued within their official capacity. Federal Defendants deny the remaining allegations in Paragraph 16.

17. The allegations in the first sentence of Paragraph 17 purport to characterize the ESA, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations inconsistent with the statute's plain language, meaning, or context. The allegations in the second, third, and fourth sentences of Paragraph 17 purport to characterize a Supreme Court opinion, which speaks for itself and is the best evidence of its contents.

1 Federal Defendants deny any allegations inconsistent with the opinion's
2 plain language, meaning, or context.

3 18. The allegations in the first and second sentences of Paragraph 18 purport to
4 characterize the ESA, which speaks for itself and is the best evidence of its
5 contents. Federal Defendants deny any allegations inconsistent with the
6 statute's plain language, meaning, or context. The allegations in the third and
7 fourth sentences of Paragraph 18 purport to characterize the ESA's
8 implementing regulations, which speak for themselves and are the best
9 evidence of their contents. Federal Defendants deny any allegations
10 inconsistent with the regulations' plain language, meaning, or context.

11 19. The allegations in the first and second sentences of Paragraph 19 purport to
12 characterize the ESA, which speaks for itself and is the best evidence of its
13 contents. Federal Defendants deny any allegations inconsistent with the
14 statute's plain language, meaning, or context. The allegations in the third
15 sentence of Paragraph 19 purport to characterize the ESA's implementing
16 regulations, which speak for themselves and are the best evidence of their
17 contents. Federal Defendants deny any allegations inconsistent with the
18 regulations' plain language, meaning, or context.

19 20. The allegations in the first and fifth sentences of Paragraph 20 purport to
20 characterize the ESA, which speaks for itself and is the best evidence of its
21 contents. Federal Defendants deny any allegations inconsistent with the
22 statute's plain language, meaning, or context. The allegations in the second

1 and third sentences of Paragraph 20 purport to characterize the ESA's
2 implementing regulations, which speak for themselves and are the best
3 evidence of their contents. Federal Defendants deny any allegations
4 inconsistent with the regulations' plain language, meaning, or context. The
5 allegations in the fourth sentence of Paragraph 20 purport to characterize a
6 Ninth Circuit opinion, which speaks for itself and is the best evidence of its
7 contents. Federal Defendants deny any allegations inconsistent with the
8 opinion's plain language, meaning, or context.
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11 21. The allegations in the first, second, and fifth sentences of Paragraph 21
12 purport to characterize the ESA's implementing regulations, which speak for
13 themselves and are the best evidence of their contents. Federal Defendants
14 deny any allegations inconsistent with the regulations' plain language,
15 meaning, or context. The allegations in the third and fourth sentences of
16 Paragraph 21 purport to characterize the ESA, which speaks for itself and is
17 the best evidence of its contents. Federal Defendants deny any allegations
18 inconsistent with the statute's plain language, meaning, or context.
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21 22. The allegations in Paragraph 22 purport to characterize the ESA's
22 implementing regulations, which speak for themselves and are the best
23 evidence of their contents. Federal Defendants deny any allegations
24 inconsistent with the regulations' plain language, meaning, or context.
25

26 23. The allegations in Paragraph 23 purport to characterize the ESA, which
27 speaks for itself and is the best evidence of its contents. Federal Defendants

1 deny any allegations inconsistent with the statute's plain language, meaning,
2 or context.

3 24. The allegations in Paragraph 24 purport to characterize the ESA's
4 implementing regulations, which speak for themselves and are the best
5 evidence of their contents. Federal Defendants deny any allegations
6 inconsistent with the regulations' plain language, meaning, or context.

7 25. The allegations in the first and second sentences of Paragraph 25 purport to
8 characterize the ESA, which speaks for itself and is the best evidence of its
9 contents. Federal Defendants deny any allegations inconsistent with the
10 statute's plain language, meaning, or context. The allegations in the third
11 sentence of Paragraph 25 purport to characterize the ESA's implementing
12 regulations, which speak for themselves and are the best evidence of their
13 contents. Federal Defendants deny any allegations inconsistent with the
14 regulations' plain language, meaning, or context. The allegations in the
15 fourth and fifth sentences of Paragraph 25 purport to characterize a Ninth
16 Circuit opinion, which speaks for itself and is the best evidence of its
17 contents. Federal Defendants deny any allegations inconsistent with the
18 opinion's plain language, meaning, or context.

19 26. The allegations in the first and second sentences of Paragraph 26 purport to
20 characterize the Administrative Procedure Act ("APA"), which speaks for
21 itself and is the best evidence of its contents. Federal Defendants deny any
22 allegations inconsistent with the statute's plain language, meaning, or

1 context. The allegations in the third sentence of Paragraph 26 purport to
2 characterize a Supreme Court opinion, which speaks for itself and is the best
3 evidence of its contents. Federal Defendants deny any allegations
4 inconsistent with the opinion's plain language, meaning, or context.
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6 27. The allegations in Paragraph 27 purport to characterize Supreme Court
7 opinions, which speak for themselves and are the best evidence of their
8 contents. Federal Defendants deny any allegations inconsistent with the
9 opinions' plain language, meaning, or context.
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11 28. Federal Defendants admit the allegations in Paragraph 28. The image
12 included under Paragraph 28 purports to be a copy of a photograph obtained
13 from FWS's website, which speaks for itself and is the best evidence of its
14 contents. Federal Defendants deny any allegations inconsistent with the
15 image's or website's plain meaning or context.
16

17 29. The allegations in the first and second sentences of Paragraph 29 purport to
18 characterize a rule published at 79 Fed. Reg. 59,992 (Oct. 3, 2014), which
19 speaks for itself and is the best evidence of its contents. Federal Defendants
20 deny any allegations inconsistent with the rule's plain language, meaning, or
21 context. The allegations in the third sentence of Paragraph 29 purport to
22 characterize a rule published at 86 Fed. Reg. 20,798 (Apr. 21, 2021), which
23 speaks for itself and is the best evidence of its contents. Federal Defendants
24 deny any allegations inconsistent with the rule's plain language, meaning, or
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1 context. Federal Defendants admit the allegations in the fourth sentence of
2 Paragraph 29.

3 30. Federal Defendants admit the allegation in Paragraph 30 that there have been
4 population surveys conducted in the Coronado National Forest. The
5 allegations in Paragraph 30 regarding what the agencies “currently know”
6 purport to characterize the results of those surveys, which speak for
7 themselves and are the best evidence of their contents. Federal Defendants
8 deny any allegations inconsistent with the surveys’ plain language, meaning,
9 or context. The remaining allegations in Paragraph 30 are too broad and
10 generalized to permit a response, and Federal Defendants deny them on that
11 basis.

12 31. The allegations in Paragraph 31 are quotes or variations of quotes taken from
13 page 158 of the 2021 BiOp, which speaks for itself and is the best evidence
14 of its contents. Federal Defendants deny any allegations inconsistent with the
15 document’s plain language, meaning, or context.

16 32. The allegations in the first, second, third, fourth, and seventh sentences of
17 Paragraph 32 are quotes or variations of quotes taken from page 159 of the
18 2021 BiOp, which speaks for itself and is the best evidence of its contents.
19 Federal Defendants deny any allegations inconsistent with the document’s
20 plain language, meaning, or context. The allegations in the fifth and sixth
21 sentences of Paragraph 32 are quotes or variations of quotes taken from page
22 162 of the 2021 BiOp, which speaks for itself and is the best evidence of its
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1 contents. Federal Defendants deny any allegations inconsistent with the
2 document's plain language, meaning, or context.

3 33. The allegations in the first and second sentences of Paragraph 33 are quotes
4 or variations of quotes taken from page 160 of the 2021 BiOp, which speaks
5 for itself and is the best evidence of its contents. Federal Defendants deny
6 any allegations inconsistent with the document's plain language, meaning,
7 or context. The allegations in the third sentence of Paragraph 33 are quotes
8 or variations of quotes taken from page 161 of the 2021 BiOp, which speaks
9 for itself and is the best evidence of its contents. Federal Defendants deny
10 any allegations inconsistent with the document's plain language, meaning,
11 or context.

12 34. The allegations in the first, second, third, fourth, fifth, and sixth sentences of
13 Paragraph 34 are quotes or variations of quotes taken from page 162 of the
14 2021 BiOp, which speaks for itself and is the best evidence of its contents.
15 Federal Defendants deny any allegations inconsistent with the document's
16 plain language, meaning, or context. Federal Defendants deny the allegations
17 in the seventh sentence of Paragraph 34.

18 35. The allegations in the first and second sentences of Paragraph 35 are quotes
19 or variations of quotes taken from page 174 of the 2021 BiOp, which speaks
20 for itself and is the best evidence of its contents. Federal Defendants deny
21 any allegations inconsistent with the document's plain language, meaning,
22 or context. The allegations in the third, fourth, and fifth sentences of

1 Paragraph 35 are quotes or variations of quotes taken from page 175 of the
2 2021 BiOp, which speaks for itself and is the best evidence of its contents.
3 Federal Defendants deny any allegations inconsistent with the document's
4 plain language, meaning, or context.
5

6 36. Federal Defendants admit the allegation in the first sentence of Paragraph 36
7 that there are 298,845 acres of designated critical habitat for the western
8 distinct population segment of the yellow-billed cuckoo. Federal Defendants
9 deny the remaining allegations in the first sentence of Paragraph 36. Federal
10 Defendants deny allegations in the second sentence of Paragraph 36.

11 37. The allegations in Paragraph 37 are quotes or variations of quotes taken from
12 page 64 of the 2021 BiOp, which speaks for itself and is the best evidence of
13 its contents. Federal Defendants deny any allegations inconsistent with the
14 document's plain language, meaning, or context. The image included under
15 Paragraph 37 purports to be a copy of a photograph obtained from FWS's
16 website, which speaks for itself and is the best evidence of its contents.
17 Federal Defendants deny any allegations inconsistent with the image's or
18 website's plain meaning or context.
19

20 38. The allegations in Paragraph 38 purport to characterize a rule published at
21 51 Fed. Reg. 16,042 (Apr. 30, 1986), which speaks for itself and is the best
22 evidence of its contents. Federal Defendants deny any allegations
23 inconsistent with the rule's plain language, meaning, or context.
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1 39. Federal Defendants admit the allegations in the first and second sentences of
2 Paragraph 39. The allegations in the third sentence of Paragraph 39 purport
3 to characterize an unidentified statement by FWS, which speaks for itself and
4 is the best evidence of its contents. Federal Defendants deny any allegations
5 inconsistent with the statement's plain language, meaning, or context.

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7 40. The allegations in the first and third sentences of Paragraph 40 are quotes or
8 variations of quotes taken from page 73 of the 2021 BiOp, which speaks for
9 itself and is the best evidence of its contents. Federal Defendants deny any
10 allegations inconsistent with the document's plain language, meaning, or
11 context. The allegations in the second sentence of Paragraph 40 are quotes
12 or variations of quotes taken from page 72 of the 2021 BiOp, which speaks
13 for itself and is the best evidence of its contents. Federal Defendants deny
14 any allegations inconsistent with the document's plain language, meaning,
15 or context.

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17 41. Federal Defendants deny the allegations in the first sentence of Paragraph 41
18 and aver that population surveys are often only conducted in a major pool in
19 the northern, upper end of the canyon, as a result of safety concerns
20 associated with surveying for the species in the canyons where it occurs
21 (Sycamore and California Gulch/Warsaw Canyon). The allegations in the
22 second sentence of Paragraph 41 are quotes or variations of quotes taken
23 from page 70 of the 2021 BiOp, which speaks for itself and is the best
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1 evidence of its contents. Federal Defendants deny any allegations
2 inconsistent with the document's plain language, meaning, or context.
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4 42. The allegations in Paragraph 42 purport to characterize FWS's 1992
5 Recovery Plan for the Sonora Chub, which speaks for itself and is the best
6 evidence of its contents. Federal Defendants deny any allegations
7 inconsistent with the document's plain language, meaning, or context.
8

9 43. The allegations in Paragraph 43 purport to characterize FWS's 2019
10 Supplemental Finding to the Recovery Plan for the Sonora Chub, which
11 speaks for itself and is the best evidence of its contents. Federal Defendants
12 deny any allegations inconsistent with the document's plain language,
13 meaning, or context.
14

15 44. The allegations in Paragraph 44 purport to characterize FWS's 2019
16 Supplemental Finding to the Recovery Plan for the Sonora Chub, which
17 speaks for itself and is the best evidence of its contents. Federal Defendants
18 deny any allegations inconsistent with the document's plain language,
19 meaning, or context.
20

21 45. The allegations in Paragraph 45 purport to characterize FWS's 2022
22 Five-Year Review for the Sonora Chub, which speaks for itself and is the
23 best evidence of its contents. Federal Defendants deny any allegations
24 inconsistent with the document's plain language, meaning, or context.
25

26 46. Federal Defendants admit the allegations in the first sentence of Paragraph
27 46. The allegations in the second and third sentences of Paragraph 46 purport

1 to characterize FWS's 2007 Recovery Plan for the Chiricahua Leopard Frog,
2 which speaks for itself and is the best evidence of its contents. Federal
3 Defendants deny any allegations inconsistent with the plan's plain language,
4 meaning, or context.
5

6 47. Federal Defendants admit the allegations in the first and second sentences of
7 Paragraph 47. The allegations in the third and fifth sentences of Paragraph
8 47 purport to characterize a rule published at 67 Fed. Reg. 40,790 (June 13,
9 2002), which speaks for itself and is the best evidence of its contents. Federal
10 Defendants deny any allegations inconsistent with the document's plain
11 language, meaning, or context. The allegations in the fourth sentence of
12 Paragraph 47 purport to characterize FWS's 2007 Recovery Plan for the
13 Chiricahua Leopard Frog, which speaks for itself and is the best evidence of
14 its contents. Federal Defendants deny any allegations inconsistent with the
15 document's plain language, meaning, or context.
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17 48. Federal Defendants deny the allegations in the first sentence of Paragraph 48
18 and admit the allegations in the second sentence of Paragraph 48. Federal
19 Defendants admit that grazing can alter bank-line vegetation and deny the
20 remaining allegations in the third sentence of Paragraph 48. Federal
21 Defendants deny the allegations in the fourth sentence of Paragraph 48.
22 Federal Defendants lack information or knowledge sufficient to formulate an
23 opinion as to the truth of the allegations in the fifth and sixth sentences of
24 Paragraph 48 and deny them on that basis. Federal Defendants also deny the
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1 allegations in the seventh and eighth sentences of Paragraph 48. The
2 allegations in the ninth sentence of Paragraph 48 characterize information in
3 FWS's 2007 Recovery Plan for the Chiricahua Leopard Frog, which speaks
4 for itself and is the best evidence of its contents. Federal Defendants deny
5 any allegations contrary to the document's plain language, meaning, and
6 context. Federal Defendants lack information or knowledge sufficient to
7 formulate an opinion as to the truth of the allegations in the tenth sentence of
8 Paragraph 48 and deny them on that basis. As to the eleventh sentence of
9 Paragraph 48, Federal Defendants admit that “[d]egraded water quality is
10 known to adversely affect both adult and larval frogs” based on the specific
11 water quality parameters outlined in FWS's 2007 Recovery Plan for the
12 Chiricahua Leopard Frog. Federal Defendants deny any allegations contrary
13 to the document's plain language, meaning, and context. Federal Defendants
14 deny the allegations listed in the twelfth and thirteenth sentences of
15 Paragraph 48.

16 49. The allegations in the first, second, third, fourth, and fifth sentences of
17 Paragraph 49 purport to characterize a rule published at 67 Fed. Reg. 40,790
18 (June 13, 2002), which speaks for itself and is the best evidence of its
19 contents. Federal Defendants deny any allegations inconsistent with the
20 document's plain language, meaning, or context. The allegations in the sixth,
21 seventh, eighth, and ninth sentences of Paragraph 49 purport to characterize
22 FWS's 2007 Recovery Plan for the Chiricahua Leopard Frog, which speaks
23

1 for itself and is the best evidence of its contents. Federal Defendants deny
2 any allegations inconsistent with the document's plain language, meaning,
3 or context.

4 50. The allegations in the first sentence of Paragraph 50 purport to characterize
5 a rule published at 67 Fed. Reg. 40,790 (June 13, 2002), which speaks for
6 itself and is the best evidence of its contents. Federal Defendants deny any
7 allegations inconsistent with the rule's plain language, meaning, or context.
8 The allegations in the second, third, fourth, fifth, and seventh sentences of
9 Paragraph 50 purport to characterize FWS's 2007 Recovery Plan for the
10 Chiricahua Leopard Frog, which speaks for itself and is the best evidence of
11 its contents. Federal Defendants deny any allegations inconsistent with the
12 document's plain language, meaning, or context. Federal Defendants admit
13 the sixth, ninth, and tenth sentences of Paragraph 50. Federal Defendants
14 admit that the allegations in the eighth sentence of Paragraph 50 are likely
15 true because the species is reported to be absent from a majority of surveyed
16 historical localities.

17 51. Federal Defendants admit the allegations in the first sentence of Paragraph
18
19 51. The allegations in the second sentence of Paragraph 51 are quotes or
20 variations of quotes taken from page 49 of the 2007 Recovery Plan, which
21 speaks for itself and is the best evidence of its contents. Federal Defendants
22 deny any allegations inconsistent with the document's plain language,
23 meaning, or context. The allegations in the third, fourth, fifth, and sixth

1 sentences of Paragraph 51 are quotes or variations of quotes taken from page
2 53 of the 2007 Recovery Plan, which speaks for itself and is the best evidence
3 of its contents. Federal Defendants deny any allegations inconsistent with the
4 document's plain language, meaning, or context.
5

6 52. Federal Defendants admit that the Southwest Endangered Species Act Team
7 issued the report titled "Chiricahua leopard frog (*Lithobates* [*Rana*]
8 *chiricahuensis*): Considerations for making effects determinations and
9 recommendations for reducing and avoiding adverse effects" ("2009
10 Report"). The allegations in Paragraph 52 are quotes or variations of quotes
11 taken from the 2009 Report, which speaks for itself and is the best evidence
12 of its contents. Federal Defendants deny any allegations inconsistent with the
13 document's plain language, meaning, or context.
14
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16 53. The allegations in Paragraph 53 purport to characterize FWS's Final Listing
17 and Designation of Critical Habitat for the Chiricahua Leopard Frog, 77 Fed.
18 Reg. 16,324 (March 20, 2012), which speaks for itself and is the best
19 evidence of its contents. Federal Defendants deny any allegations
20 inconsistent with the document's plain language, meaning, and context.
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23 54. The allegations in Paragraph 54 purport to characterize FWS's Final Listing
24 and Designation of Critical Habitat for the Chiricahua Leopard Frog, 77 Fed.
25 Reg. 16,324 (March 20, 2012), which speaks for itself and is the best
26 evidence of its contents. Federal Defendants deny any allegations
27 inconsistent with the document's plain language, meaning, and context.

- 1 55. The allegations in the first sentence of Paragraph 55 are quotes or variations
2 of quotes taken from page 16 of the 2021 BiOp, which speaks for itself and
3 is the best evidence of its contents. Federal Defendants deny any allegations
4 inconsistent with the document's plain language, meaning, or context. The
5 allegations in the second sentence of Paragraph 55 purport to characterize
6 USFS's 2018 Coronado National Forest Land and Resource Management
7 Plan ("2018 Forest Plan"), which speaks for itself and is the best evidence of
8 its contents. Federal Defendants deny any allegations inconsistent with the
9 document's plain language, meaning, or context. The allegations in the third
10 sentence of Paragraph 55 consist of legal conclusions to which no response
11 is required. To the extent a response is required, the allegations are denied.
12
13 56. The allegations in the first sentence of Paragraph 56 purport to characterize
14 and quote the 2018 Forest Plan, which speaks for itself and is the best
15 evidence of its contents. Federal Defendants deny any allegations
16 inconsistent with the document's plain language, meaning, or context. The
17 allegations in the second sentence of Paragraph 56 purport to characterize the
18 2018 Forest Plan and USFS's 2017 Final Programmatic Environmental
19 Impact Statement for Revision of the Coronado National Forest Land and
20 Resource Management Plan, which speak for themselves and are the best
21 evidence of their contents. Federal Defendants deny any allegations
22 inconsistent with the documents' plain language, meaning, or context.
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- 1 60. The allegations in Paragraph 60 purport to characterize and quote the 2019
2 Amended BA, which speaks for itself and is the best evidence of its contents.
3 Federal Defendants deny any allegations inconsistent with the document's
4 plain language, meaning, or context.
5
- 6 61. The allegations in Paragraph 61 purport to characterize and quote
7 unidentified communications between FWS and USFS, which speak for
8 themselves and are the best evidence of their contents. Federal Defendants
9 deny any allegations inconsistent with the communications' plain language,
10 meaning, or context.
- 11
- 12 62. The allegations in Paragraph 62 purport to characterize and quote a 2019
13 report authored by Sferra, et al., which speaks for itself and is the best
14 evidence of its contents. Federal Defendants deny any allegations
15 inconsistent with the report's plain language, meaning, or context.
- 16
- 17 63. The allegations in Paragraph 63 purport to characterize and quote a 2016
18 BiOp for an unrelated federal action not at issue in this lawsuit. The
19 document speaks for itself and is the best evidence of its contents. Federal
20 Defendants deny any allegations inconsistent with that BiOp's plain
21 language, meaning, or context.
- 22
- 23 64. The allegations in Paragraph 64 purport to characterize the 2021 BiOp,
24 which speaks for itself and is the best evidence of its contents. Federal
25 Defendants deny any allegations inconsistent with the document's plain
26 language, meaning, or context.
- 27

- 1 65. The allegations in Paragraph 65 purport to characterize and quote the 2021
2 BiOp, which speaks for itself and is the best evidence of its contents. Federal
3 Defendants deny any allegations inconsistent with the document's plain
4 language, meaning, or context.
5
- 6 66. The allegations in Paragraph 66 purport to characterize and quote the 2021
7 BiOp, which speaks for itself and is the best evidence of its contents. Federal
8 Defendants deny any allegations inconsistent with the document's plain
9 language, meaning, or context.
10
- 11 67. The allegations in Paragraph 67 purport to characterize and quote the 2021
12 BiOp, which speaks for itself and is the best evidence of its contents. Federal
13 Defendants deny any allegations inconsistent with the document's plain
14 language, meaning, or context.
15
- 16 68. The allegations in Paragraph 68 purport to characterize the 2021 BiOp,
17 which speaks for itself and is the best evidence of its contents. Federal
18 Defendants deny any allegations inconsistent with the document's plain
19 language, meaning, or context.
20
- 21 69. Federal Defendants deny the allegations in the first part of the first sentence
22 of Paragraph 69 regarding FWS's alleged "failure to adequately consider the
23 effects of climate change." The allegations in the second part of the first
24 sentence of Paragraph 69 regarding alleged concerns raised by an FWS
25 cuckoo expert purport to characterize an unidentified FWS communication,
26 which speaks for itself and is the best evidence of its contents. Federal
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1 Defendants deny any allegations inconsistent with the communication's
2 plain language, meaning, or context. The allegations in the third part of the
3 first sentence of Paragraph 69 regarding "prior BiOps" purport to
4 characterize and quote unidentified prior Biological Opinions, which speak
5 for themselves and are the best evidence of their contents. Federal
6 Defendants deny any allegations inconsistent with the documents' plain
7 language, meaning, or context. The allegations in the second and third
8 sentences of Paragraph 69 purport to characterize and quote the 2021 BiOp,
9 which speaks for itself and is the best evidence of its contents. Federal
10 Defendants deny any allegations inconsistent with the document's plain
11 language, meaning, or context.
12

13 70. The allegations in Paragraph 70 purport to characterize and quote the 2021
14 BiOp, which speaks for itself and is the best evidence of its contents. Federal
15 Defendants deny any allegations inconsistent with the document's plain
16 language, meaning, or context.
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18 71. The allegations in Paragraph 71 purport to characterize and quote the 2021
19 BiOp, which speaks for itself and is the best evidence of its contents. Federal
20 Defendants deny any allegations inconsistent with the document's plain
21 language, meaning, or context.
22

23 72. The allegations in Paragraph 72 purport to characterize and quote the 2021
24 BiOp, which speaks for itself and is the best evidence of its contents. Federal
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26

1 Defendants deny any allegations inconsistent with the document's plain
2 language, meaning, or context.

3 73. The allegations in the first and second sentences of Paragraph 73 purport to
4 characterize and quote the 2021 BiOp, which speaks for itself and is the best
5 evidence of its contents. Federal Defendants deny any allegations
6 inconsistent with the document's plain language, meaning, or context. The
7 allegations in the third sentence of Paragraph 73 purport to quote the 2019
8 Amended BA, which speaks for itself and is the best evidence of its contents.
9 Federal Defendants deny any allegations inconsistent with the document's
10 plain language, meaning, or context. Federal Defendants deny the fourth
11 sentence of Paragraph 73.

12 74. The allegations in the first sentence of Paragraph 74 purport to characterize
13 the 2021 BiOp, which speaks for itself and is the best evidence of its contents.
14 Federal Defendants deny any allegations inconsistent with the document's
15 plain language, meaning, or context. The allegations in the second and third
16 sentences of Paragraph 74 purport to characterize and quote the 2019
17 Amended BA, which speaks for itself and is the best evidence of its contents.
18 Federal Defendants deny any allegations inconsistent with the document's
19 plain language, meaning, or context.

20 75. The allegations in Paragraph 75 purport to characterize and quote the 2021
21 BiOp, which speaks for itself and is the best evidence of its contents. Federal
22

1 Defendants deny any allegations inconsistent with the document's plain
2 language, meaning, or context.

3 76. The allegations in Paragraph 76 purport to characterize and quote the 2021
4 BiOp, which speaks for itself and is the best evidence of its contents. Federal
5 Defendants deny any allegations inconsistent with the document's plain
6 language, meaning, or context.

7 77. The allegations in Paragraph 77 purport to characterize and quote the 2021
8 BiOp, which speaks for itself and is the best evidence of its contents. Federal
9 Defendants deny any allegations inconsistent with the document's plain
10 language, meaning, or context.

11 78. The allegations in Paragraph 78 purport to characterize and quote the 2021
12 BiOp, which speaks for itself and is the best evidence of its contents. Federal
13 Defendants deny any allegations inconsistent with the document's plain
14 language, meaning, or context.

15 79. The allegations in Paragraph 79 purport to characterize and quote the 2021
16 BiOp, which speaks for itself and is the best evidence of its contents. Federal
17 Defendants deny any allegations inconsistent with the document's plain
18 language, meaning, or context.

19 80. The allegations in Paragraph 80 purport to characterize the 2021 BiOp,
20 which speaks for itself and is the best evidence of its contents. Federal
21 Defendants deny any allegations inconsistent with the document's plain
22 language, meaning, or context.

- 1 81. Federal Defendants deny the allegations in the first part of the first sentence
2 of Paragraph 81 regarding FWS's alleged "failure to address climate
3 change." The remaining allegations in the first sentence of Paragraph 81
4 purport to characterize and quote an unidentified document allegedly issued
5 by FWS two years prior to the 2021 BiOp, which speaks for itself and is the
6 best evidence of its contents. Federal Defendants deny any allegations
7 inconsistent with the document's plain language, meaning, or context. The
8 allegations in the second sentence of Paragraph 81 purport to characterize the
9 2021 BiOp, which speaks for itself and is the best evidence of its contents.
10 Federal Defendants deny any allegations inconsistent with the document's
11 plain language, meaning, or context.
- 12 82. The allegations in Paragraph 82 purport to characterize and quote the 2021
13 BiOp, which speaks for itself and is the best evidence of its contents. Federal
14 Defendants deny any allegations inconsistent with the document's plain
15 language, meaning, or context.
- 16 83. The allegations in the first and second sentences of Paragraph 83 purport to
17 characterize and quote the 2021 BiOp, which speaks for itself and is the best
18 evidence of its contents. Federal Defendants deny any allegations
19 inconsistent with the document's plain language, meaning, or context.
20 Federal Defendants deny the allegations in the third sentence of Paragraph
21 83. The allegations in the fourth and fifth sentences of Paragraph 83 purport
22 to characterize the 2021 BiOp, which speaks for itself and is the best evidence

1 of its contents. Federal Defendants deny any allegations inconsistent with the
2 document's plain language, meaning, or context.

3 84. The allegations in the first sentence of Paragraph 84 purport to characterize
4 the 2021 BiOp, which speaks for itself and is the best evidence of its contents.
5 Federal Defendants deny any allegations inconsistent with the document's
6 plain language, meaning, or context. The allegations in the second, third,
7 fourth, fifth, and sixth sentences of Paragraph 84 purport to characterize and
8 quote the 2019 Amended BA, which speaks for itself and is the best evidence
9 of its contents. Federal Defendants deny any allegations inconsistent with the
10 document's plain language, meaning, or context.

11 85. The allegations in Paragraph 85 purport to characterize and quote the 2019
12 Amended BA, which speaks for itself and is the best evidence of its contents.
13 Federal Defendants deny any allegations inconsistent with the document's
14 plain language, meaning, or context.

15 86. The allegations in Paragraph 86 purport to characterize and quote the 2021
16 BiOp, which speaks for itself and is the best evidence of its contents. Federal
17 Defendants deny any allegations inconsistent with the document's plain
18 language, meaning, or context.

19 87. The allegations in Paragraph 87 purport to characterize and quote the 2021
20 BiOp, which speaks for itself and is the best evidence of its contents. Federal
21 Defendants deny any allegations inconsistent with the document's plain
22 language, meaning, or context.

- 1 88. The allegations in Paragraph 88 purport to characterize and quote the 2021
2 BiOp, which speaks for itself and is the best evidence of its contents. Federal
3 Defendants deny any allegations inconsistent with the document's plain
4 language, meaning, or context.
5
- 6 89. The allegations in Paragraph 89 purport to characterize and quote the 2021
7 BiOp, which speaks for itself and is the best evidence of its contents. Federal
8 Defendants deny any allegations inconsistent with the document's plain
9 language, meaning, or context.
10
- 11 90. The allegations in Paragraph 90 consist of legal conclusions to which no
12 response is required. To the extent a response is required, the allegations are
13 denied.
14
- 15 91. The allegations in Paragraph 91 purport to characterize and quote the 2021
16 BiOp, which speaks for itself and is the best evidence of its contents. Federal
17 Defendants deny any allegations inconsistent with the document's plain
18 language, meaning, or context.
19
- 20 92. The allegations in the first, second, fourth, and fifth sentences of Paragraph
21 92 purport to characterize and quote the 2021 BiOp, which speaks for itself
22 and is the best evidence of its contents. Federal Defendants deny any
23 allegations inconsistent with the document's plain language, meaning, or
24 context. The allegations in the third sentence of Paragraph 92 consist of legal
25 conclusions to which no response is required. To the extent a response is
26 required, the allegations are denied.
27

1 93. In response to the first sentence of Paragraph 93, Federal Defendants admit
2 that they received a letter from Plaintiffs dated February 28, 2022 (“2022
3 Letter”). To the extent that the first sentence of Paragraph 93 contains any
4 inferences regarding Plaintiffs’ compliance with provisions of the ESA,
5 those allegations are legal conclusions to which no response is required. To
6 the extent a response is required, the allegations are denied. The remaining
7 allegations in the first sentence of Paragraph 93 purport to characterize the
8 2022 Letter, which speaks for itself and is the best evidence of its contents.
9 Federal Defendants deny any allegations inconsistent with the document’s
10 plain language, meaning, or context. The allegations in the second and third
11 sentences of Paragraph 93 also purport to characterize the 2022 Letter, which
12 speaks for itself and is the best evidence of its contents. Federal Defendants
13 deny any allegations inconsistent with the document’s plain language,
14 meaning, or context.

15 94. Federal Defendants admit the allegations in the first sentence of Paragraph
16 94. The allegations in the second and third sentences of Paragraph 94 purport
17 to characterize and quote an April 27, 2022, letter from FWS (“2022 FWS
18 Response”), which speaks for itself and is the best evidence of its contents.
19 Federal Defendants deny any allegations inconsistent with the document’s
20 plain language, meaning, or context.

21 95. The allegations in the first sentence of Paragraph 95 purport to characterize
22 the 2022 FWS Response and the 2021 BiOp, which speak for themselves and
23

1 are the best evidence of their contents. Federal Defendants deny any
2 allegations inconsistent with the documents' plain language, meaning, or
3 context. The allegations in the second sentence of Paragraph 95 purport to
4 characterize the 2022 FWS Response and to quote an unidentified document
5 allegedly issued by FWS, documents which speak for themselves and are the
6 best evidence of their contents. Federal Defendants deny any allegations
7 inconsistent with the documents' plain language, meaning, or context.
8

9
10 96. The allegations in the first, second, third, and fourth sentences of Paragraph
11 96 purport to characterize and quote the 2022 FWS Response, which speaks
12 for itself and is the best evidence of its contents. Federal Defendants deny
13 any allegations inconsistent with the document's plain language, meaning,
14 or context. The allegations in the fifth sentence of Paragraph 96 purport to
15 characterize the 2022 FWS Response and unidentified reports cited in the
16 2021 BiOp, which speak for themselves and are the best evidence of their
17 contents. Federal Defendants deny any allegations inconsistent with the
18 documents' plain language, meaning, or context.
19

20
21 97. The allegations in the first, second, and third sentences of Paragraph 97
22 purport to characterize and quote an April 27, 2022, letter from USFS ("2022
23 USFS Response"), which speaks for itself and is the best evidence of its
24 contents. Federal Defendants deny any allegations inconsistent with the
25 document's plain language, meaning, or context. The allegations in the fourth
26 sentence of Paragraph 97 purport to characterize the 2019 Amended BA and
27

1 2021 BiOp, which speak for themselves and are the best evidence of their
2 contents. Federal Defendants deny any allegations inconsistent with the
3 documents' plain language, meaning, or context. Federal Defendants deny
4 the allegations in the fifth sentence of Paragraph 97.
5

6 98. The allegations in Paragraph 98 purport to characterize and quote the 2022
7 USFS Response, which speaks for itself and is the best evidence of its
8 contents. Federal Defendants deny any allegations inconsistent with the
9 document's plain language, meaning, or context.
10

11 99. The allegations in Paragraph 99 purport to characterize the 2022 USFS
12 Response, which speaks for itself and is the best evidence of its contents.
13 Federal Defendants deny any allegations inconsistent with the document's
14 plain language, meaning, or context.
15

16 100. In response to the first sentence of Paragraph 100, Federal Defendants
17 admit that they received a letter from Plaintiffs dated February 24, 2023
18 ("2023 Letter"). The allegations in the second sentence of Paragraph 100
19 purport to characterize the 2023 Letter, which speaks for itself and is the best
20 evidence of its contents. Federal Defendants deny any allegations
21 inconsistent with the document's plain language, meaning, or context.
22

23 101. Federal Defendants admit the allegations in the first sentence of Paragraph
24 101. The allegations in the second sentence of Paragraph 101 purport to
25 characterize an April 24, 2023 letter from FWS ("2023 FWS Response") and
26 an April 26, 2023 letter from USFS ("2023 USFS Response"), which speak
27

1 for themselves and are the best evidence of their contents. Federal
2 Defendants deny any allegations inconsistent with the documents' plain
3 language, meaning, or context. The allegations in the third and fourth
4 sentences of Paragraph 101 purport to characterize and quote the 2023 USFS
5 Response, which speaks for itself and is the best evidence of its contents.
6 Federal Defendants deny any allegations inconsistent with the document's
7 plain language, meaning, or context.

8
9 102. The allegations in Paragraph 102 purport to characterize and quote the 2023
10 USFS Response, which speaks for itself and is the best evidence of its
11 contents. Federal Defendants deny any allegations inconsistent with the
12 document's plain language, meaning, or context.

13
14 103. Federal Defendants admit that Plaintiff sent correspondence to FWS and
15 USFS on February 21, 2024 (a letter to FWS and an email to USFS). The
16 allegations in the second half of the first sentence, and in the remaining
17 sentences of Paragraph 103, purport to characterize CBD's February 21,
18 2024 letter, which speaks for itself and is the best evidence of its contents.
19 Federal Defendants deny any allegations inconsistent with the document's
20 plain language, meaning, or context.

21
22 104. Federal Defendants admit the allegations in Paragraph 104.

23
24 105. Federal Defendants admit that CBD sent a letter to FWS and USFS on
25 March 19, 2024. The allegations in the second half of the first sentence, and
26 in the remaining sentences of Paragraph 105, purport to characterize CBD's

1 March 19, 2024 letter, which speaks for itself and is the best evidence of its
2 contents. Federal Defendants deny any allegations inconsistent with the
3 document's plain language, meaning, or context.
4

5 106. Federal Defendants admit the first sentence of Paragraph 106. The
6 allegations in the second, third, and fourth sentences of Paragraph 106
7 purport to characterize CBD's June 14, 2024 NOI letter, which speaks for
8 itself and is the best evidence of its contents. Federal Defendants deny any
9 allegations inconsistent with the document's plain language, meaning, or
10 context.
11

12 107. The allegations in Paragraph 107 purport to characterize CBD's June 14,
13 2024 NOI letter, which speaks for itself and is the best evidence of its
14 contents. Federal Defendants deny any allegations inconsistent with the
15 document's plain language, meaning, or context.
16

17 108. Federal Defendants admit the allegations in Paragraph 108.
18

19 109. Federal Defendants' responses to all preceding paragraphs are reasserted
20 and incorporated herein by reference.
21

22 110. Federal Defendants deny the allegations in Paragraph 110.
23

24 111. Federal Defendants deny the allegations in Paragraph 111.
25

26 112. Federal Defendants deny the allegations in Paragraph 112.
27

28 113. Federal Defendants deny the allegations in Paragraph 113.
29

30 114. Federal Defendants deny the allegations in Paragraph 114.
31

32 115. Federal Defendants deny the allegations in Paragraph 115.
33

1 116. Federal Defendants deny the allegations in Paragraph 116.

2 117. Federal Defendants' responses to all preceding paragraphs are reasserted
3 and incorporated herein by reference.

4 118. Federal Defendants deny the allegations in Paragraph 118.

5 119. Federal Defendants deny the allegations in Paragraph 119.

6
7 **PLAINTIFFS' PRAYER FOR RELIEF**

8 The remainder of Plaintiffs' complaint constitutes their requests for relief, to
9 which no response is required. To the extent a further response is required, Federal
10 Defendants deny that Plaintiffs are entitled to the relief requested or any relief
11 whatsoever.

12
13 **GENERAL DENIAL**

14 Federal Defendants deny any allegations in Plaintiffs' complaint, whether
15 express or implied, that are not specifically admitted, denied, or qualified herein.

16 Dated: January 31, 2025

17
18 Respectfully Submitted,

19
20 LISA L. RUSSELL, Deputy Assistant Attorney
21 General
22 S. JAY GOVINDAN, Chief
23 NICOLE M. SMITH, Assistant Chief

24 /s/ Elizabeth A. Kirby
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